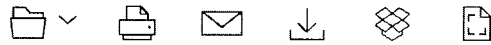








# ATTACHMENT A

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## Frongetta v City of Rochester, 151 A.D.3d 1742

[Copy Citation](#)

Supreme Court of New York, Appellate Division, Fourth Department

June 9, 2017, Decided; June 9, 2017, Entered

762 CA 16-02259

### Reporter

**151 A.D.3d 1742** \* | [56 N.Y.S.3d 750](#) \*\* | [2017 N.Y. App. Div. LEXIS 4639](#) \*\*\* | [2017 NY Slip Op 04696](#) \*\*\*\* | [2017 WL 2491659](#)

[\*\*\*\*1] SHARON FRONGETTA, PLAINTIFF-RESPONDENT, v CITY OF ROCHESTER, DEFENDANT-APPELLANT.

**Notice:** THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

### Core Terms

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amended complaint, notice of claim, corrected

**Counsel:** [\*\*\*1] BRIAN F. CURRAN, CORPORATION COUNSEL,  
ROCHESTER (PATRICK BEATH ▼ OF COUNSEL), FOR DEFENDANT-  
APPELLANT.

PAMELA R. HALPIN ▼, EAST ROCHESTER, FOR PLAINTIFF-  
RESPONDENT.

**Judges:** PRESENT: CENTRA ▼, J.P., PERADOTTO ▼, CARNI ▼,  
NEMOYER ▼, AND CURRAN ▼, JJ.

## Opinion

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[EDITOR'S NOTE: This document reflects the format of the Official  
New York Appellate Division Reports.]

[\*\*750] [\*1742] Appeal from an order of the Supreme Court,  
Monroe County (Renee Forgensi Minarik ▼, A.J.), entered April 15,  
2016. The order denied the motion of defendant to dismiss the  
amended complaint.

It is hereby ORDERED that the order so appealed from is unanimously  
affirmed without costs.

Memorandum: Plaintiff commenced this action seeking damages for  
injuries that she allegedly sustained when she tripped and fell on  
uneven bricks adjacent to a drainage grate in an area near Hayward  
Avenue and Railroad Street in the Rochester Public Market. Plaintiff's  
notice of claim mistakenly described the location of the accident as  
Hay Street rather than Hayward Avenue, but she corrected that error  
in her amended complaint. We conclude that Supreme Court properly  
denied defendant's motion to dismiss the amended complaint based  
on the error in the notice of claim. The court did not abuse its  
discretion in disregarding the mistake in the notice of claim because  
the mistake was not made in [\*\*\*2] bad faith and defendant  
[\*1743] failed to establish that it was prejudiced by the defect (see  
General Municipal Law § 50-e [6]). Indeed, nothing in the record  
indicates that defendant instructed anyone to investigate the scene of  
the accident either before or after the correct location was revealed  
(see Ciaravino v City of New York, 110 AD3d 511, 511-512, 973

N.Y.S.2d 159). We reject defendant's further contention that, after the error was corrected, plaintiff failed to identify the location of the accident with sufficient specificity (see Brown v City of New York, 95 NY2d 389, 393, 740 N.E.2d 1078, 718 N.Y.S.2d 4).

Entered: June 9, 2017



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# ATTACHMENT B

**PREV**  
**SECTION 50-D**

[Municipal Liability For Malpractice Of Certain Physicians, Resident Physicians, Internes, Dentists, Podiatrists And Optometrists In Publi... \(/Legislation/Laws/GMU/50-D/\)](#)

**NEXT**  
**SECTION 50-F**

[Recording Of Notice Of Claim \(/Legislation/Laws/GMU/50-F/\)](#)

## Section 50-E

Notice of claim

General Municipal (GMU)

SHARE



1. When service required; time for service; upon whom service required.

(a) In any case founded upon tort where a notice of claim is required by law as a condition precedent to the commencement of an action or special proceeding against a public corporation, as defined in the general construction law, or any officer, appointee or employee thereof, the notice of claim shall comply with and be served in accordance with the provisions of this section within ninety days after the claim arises; except that in wrongful death actions, the ninety days shall run from the appointment of a representative of the decedent's estate.

(b) Service of the notice of claim upon an officer, appointee or employee of a public corporation shall not be a condition precedent to the commencement of an action or special proceeding against such person. If an action or special proceeding is commenced against such person, but not against the public corporation, service of the notice of claim upon the public corporation shall be required only if the corporation has a statutory obligation to indemnify such person under this chapter or any other

provision of law.

2. Form of notice; contents. The notice shall be in writing, sworn to by or on behalf of the claimant, and shall set forth: (1) the name and post-office address of each claimant, and of his attorney, if any; (2) the nature of the claim; (3) the time when, the place where and the manner in which the claim arose; and (4) the items of damage or injuries claimed to have been sustained so far as then practicable but a notice with respect to a claim against a municipal corporation other than a city with a population of one million or more persons shall not state the amount of damages to which the claimant deems himself entitled, provided, however, that the municipal corporation, other than a city with a population of one million or more persons, may at any time request a supplemental claim setting forth the total damages to which the claimant deems himself entitled. A supplemental claim shall be provided by the claimant within fifteen days of the request. In the event the supplemental demand is not served within fifteen days, the court, on motion, may order that it be provided by the claimant.

3. How served; when service by mail complete; defect in manner of service; return of notice improperly served.

(a) The notice shall be served on the public corporation against which the claim is made by delivering a copy thereof personally, or by registered or certified mail, to the person designated by law as one to whom a summons in an action in the supreme court issued against such corporation may be delivered, or to an attorney regularly engaged in representing such public corporation or, in a city with a population of over one million, by electronic means in a form and manner prescribed by such city.

(b) Service by registered or certified mail shall be complete upon deposit of the notice of claim, enclosed in a postpaid properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the United States post office department within the state.

(c) If the notice is served within the period specified by this section, but in a manner not in compliance with the provisions of this subdivision, the service shall be valid if the public corporation against which the claim is made demands that the claimant or any other person interested in the claim be examined in regard to it, or if the notice is actually received by a proper person within the time specified by this section, and the public corporation fail to return the notice, specifying the defect in the manner of service, within thirty days after the notice is received.

(d) If the notice is served within the period specified by this section and is returned for the reason and within the time provided in this subdivision, the claimant may serve a new notice in a manner complying with the provisions of this subdivision within ten days after the returned notice is received. If a new notice is so served within that period, it shall be deemed timely served.

(e) If the notice is served by electronic means, as defined in paragraph two of subdivision (f) of rule twenty-one hundred three of the civil practice law and rules, it shall contain the information required under the provisions of subdivision two of this section. In addition, such notice shall contain the following declaration: "I certify that all information contained in this notice is true and correct to the best of my knowledge and belief. I understand that the willful making of any false statement of material fact herein will subject me to criminal penalties and civil liabilities." Service of the notice shall be complete upon successful transmission of the notice as indicated by an electronic receipt provided by such city, which shall transmit an electronic receipt number to the claimant forthwith.

(f) Service of a notice of claim on the secretary of state as agent of any public corporation, as defined in subdivision one of section sixty-six of the general construction law, whatsoever created or existing by virtue of the laws of the state of New York upon whom service of a notice of claim is required as a condition precedent to being sued, may be made by personally



delivering to and leaving with the secretary of state or a deputy, or with any person authorized by the secretary of state to receive such service, at the office of the department of state in the city of Albany, duplicate copies of such notice of claim together with the statutory fee, which fee shall be a taxable disbursement but only in the amount equal to the portion of the fee collected by the public corporation in accordance with subdivision four of this section. Service on such public corporation shall be complete when the secretary of state is so served. Within ten days after receiving a notice of claim, the secretary of state shall either: (1) send one of such copies by certified mail, return receipt requested, to such public corporation, at the post office address on file in the department of state, specified for the purpose; or (2) electronically transmit a copy to such public corporation at the electronic address on file with the department of state specified for that purpose; or (3) transmit a copy to such public corporation by any other such means or procedure established by the secretary of state, provided that such other means or procedure of transmittal must be verifiable.

4. Requirements of section exclusive except as to conditions precedent to liability for certain defects or snow or ice. No other or further notice, no other or further service, filing or delivery of the notice of claim, and no notice of intention to commence an action or special proceeding, shall be required as a condition to the commencement of an action or special proceeding for the enforcement of the claim; provided, however, that nothing herein contained shall be deemed to dispense with the requirement of notice of the defective, unsafe, dangerous or obstructed condition of any street, highway, bridge, culvert, sidewalk or crosswalk, or of the existence of snow or ice thereon, where such notice now is, or hereafter may be, required by law, as a condition precedent to liability for damages or injuries to person or property alleged to have been caused by such condition, and the failure or negligence to repair or remove the same after the receipt of such notice.

5. Application for leave to serve a late notice.

Upon application, the court, in its discretion, may extend the time to serve a notice of claim specified in paragraph (a) of subdivision one of this section, whether such service was made upon a public corporation or the secretary of state. The extension shall not exceed the time limited for the commencement of an action by the claimant against the public corporation. In determining whether to grant the extension, the court shall consider, in particular, whether the public corporation or its attorney or its insurance carrier acquired actual knowledge of the essential facts constituting the claim within the time specified in subdivision one of this section or within a reasonable time thereafter. The court shall also consider all other relevant facts and circumstances, including: whether the claimant was an infant, or mentally or physically incapacitated, or died before the time limited for service of the notice of claim; whether the claimant failed to serve a timely notice of claim by reason of his justifiable reliance upon settlement representations made by an authorized representative of the public corporation or its insurance carrier; whether the claimant in serving a notice of claim made an excusable error concerning the identity of the public corporation against which the claim should be asserted; if service of the notice of claim is attempted by electronic means pursuant to paragraph (e) of subdivision three of this section, whether the delay in serving the notice of claim was based upon the failure of the computer system of the city or the claimant or the attorney representing the claimant; that such claimant or attorney, as the case may be, submitted evidence or proof as is reasonable showing that (i) the submission of the claim was attempted to be electronically made in a timely manner and would have been completed but for the failure of the computer system utilized by the sender or recipient, and (ii) that upon becoming aware of both the failure of such system and the failure of the city to receive such submission, the claimant or attorney had insufficient time to make such claim within the permitted time period in a manner as otherwise prescribed by law; and whether the delay in serving the notice of claim substantially prejudiced the public corporation in maintaining its defense on the merits.

An application for leave to serve a late notice shall not be denied on the

ground that it was made after commencement of an action against the public corporation.

6. Mistake, omission, irregularity or defect. At any time after the service of a notice of claim and at any stage of an action or special proceeding to which the provisions of this section are applicable, a mistake, omission, irregularity or defect made in good faith in the notice of claim required to be served by this section, not pertaining to the manner or time of service thereof, may be corrected, supplied or disregarded, as the case may be, in the discretion of the court, provided it shall appear that the other party was not prejudiced thereby.

7. Applications under this section. All applications under this section shall be made to the supreme court or to the county court: (a) in a county where the action may properly be brought for trial, (b) if an action to enforce the claim has been commenced, in the county where the action is pending, or (c) in the event that there is no motion term available in any of the counties specified in clause (a) or (b) hereof, in any adjoining county. Where the application is for leave to serve a late notice of claim, it shall be accompanied by a copy of the proposed notice of claim.

8. Inapplicability of section. This section shall not apply to claims arising under the provisions of the workers' compensation law, the volunteer firefighters' benefit law, or the volunteer ambulance workers' benefit law or to claims against public corporations by their own infant wards.

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**PREV**

**SECTION 50-D**

Municipal Liability For Malpractice Of Certain Physicians, Resident Physicians, Internes, Dentists, Podiatrists And Optometrists In Publi... (/Legislation/Laws/GMU/50-D/)

**NEXT**

**SECTION 50-F**

Recording Of Notice Of Claim (/Legislation/Laws/GMU/50-F/)

# ATTACHMENT C

**PREV**  
**SECTION 50-G**

[Recording Of Notice Of Defect \(/Legislation/Laws/GMU/50-G\)](#)

**NEXT**  
**SECTION 50-I**

[Presentation Of Tort Claims; Commencement Of Actions \(/Legislation/Laws/GMU/50-I/\)](#)

## Section 50-H

Examination of claims

General Municipal (GMU)

SHARE



1. Wherever a notice of claim is filed against a city, county, town, village, fire district, ambulance district or school district the city, county, town, village, fire district, ambulance district or school district shall have the right to demand an examination of the claimant relative to the occurrence and extent of the injuries or damages for which claim is made, which examination shall be upon oral questions unless the parties otherwise stipulate and may include a physical examination of the claimant by a duly qualified physician. If the party to be examined desires, he or she is entitled to have such examination in the presence of his or her own personal physician and such relative or other person as he or she may elect. Exercise of the right to demand a physical examination of the claimant as provided in this section shall in no way affect the right of a city, county, town, village, fire district, ambulance district or school district in a subsequent action brought upon the claim to demand a physical examination of the plaintiff pursuant to statute or court rule.

2. The demand for examination as provided in subdivision one of this section shall be made by the chief executive officer or, where there is no

such officer, by the chairman of the governing body of the city, county, town, village, fire district or school district or by such officer, agent or employee as may be designated by him for that purpose. The demand shall be in writing and shall be served personally or by registered or certified mail upon the claimant unless the claimant is represented by an attorney, when it shall be served personally or by mail upon his attorney. The demand shall give reasonable notice of the examination. It shall state the person before whom the examination is to be held, the time, place and subject matter thereof and, if a physical examination is to be required, it shall so state. If the place of examination is located outside the municipality against which the claim is made, the claimant may demand, within ten days of such service, that the examination be held at a location within such municipality. Such location shall be determined by the municipality. If a physical examination is to be required and there is no appropriate place for such an examination within the municipality, such examination shall be given at a location as close to such municipality as practicable. No demand for examination shall be effective against the claimant for any purpose unless it shall be served as provided in this subdivision within ninety days from the date of filing of the notice of claim, or if service of the notice of claim is made by service upon the secretary of state pursuant to section fifty-three of this article, within one hundred days from the date of such service.

3. In any examination required pursuant to the provisions of this section the claimant shall have the right to be represented by counsel. The examination shall be conducted upon oath or affirmation. The officer or person before whom the examination is had shall take down or cause to be taken down every question and answer unless the parties consent that only the substance of the testimony be inserted. The testimony so taken, together with the report of the examining physician where a physical examination is required, shall constitute the record of the examination. The transcript of the record of an examination shall not be subject to or available for public inspection, except upon court order upon good cause shown, but shall be furnished to the claimant or his attorney upon request.

4. A transcript of the testimony taken at an examination pursuant to the provisions of this section may be read in evidence by either party, in an action founded upon the claim in connection with which it was taken, at the trial thereof or upon assessment of damages or upon motion. In an action by an executor or administrator to recover damages for a wrongful act, neglect or default by which a decedent's death was caused, the testimony of such decedent taken pursuant to the provisions of this section in respect of such wrongful act, neglect or default may be read in evidence.

5. Where a demand for examination has been served as provided in subdivision two of this section no action shall be commenced against the city, county, town, village, fire district or school district against which the claim is made unless the claimant has duly complied with such demand for examination, which compliance shall be in addition to the requirements of section fifty-e of this chapter. If such examination is not conducted within ninety days of service of the demand, the claimant may commence the action. The action, however, may not be commenced until compliance with the demand for examination if the claimant fails to appear at the hearing or requests an adjournment or postponement beyond the ninety day period. If the claimant requests an adjournment or postponement beyond the ninety day period, the city, county, town, village, fire district or school district shall reschedule the hearing for the earliest possible date available.

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**PREV**

**SECTION 50-G**

[Recording Of Notice Of Defect \(/Legislation/Laws/GMU/50-G/\)](#)

**NEXT**

**SECTION 50-I**

[Presentation Of Tort Claims; Commencement Of Actions \(/Legislation/Laws/GMU/50-I/\)](#)